

**FILED**  
DISTRICT COURT OF GUAM

FEB - 3 2006

MARY L.M. MORAN  
CLERK OF COURT

\$3,700.MDF

LEONARDO M. RAPADAS  
United States Attorney  
KARON V. JOHNSON  
Assistant U.S. Attorney  
Suite 500, Sirena Plaza  
108 Hernan Cortez Avenue  
Hagåtña, Guam 96910  
Telephone: (671) 472-7332/7283  
Telecopier: (671) 472-7334

Attorneys for United States of America

**IN THE UNITED STATES DISTRICT COURT  
FOR THE TERRITORY OF GUAM**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

\$3,700.00 IN UNITED STATES  
CURRENCY,

Defendant.

CIVIL CASE NO. 05-00040

**MOTION FOR DEFAULT JUDGMENT  
AND ISSUANCE OF A PRELIMINARY  
ORDER OF FORFEITURE AND  
MEMORANDUM OF LAW**

COMES NOW the plaintiff United States of America, by and through its attorneys,  
Leonardo M. Rapadas, United States Attorney, and Karon V. Johnson, Assistant United States  
Attorney, and hereby moves this Honorable Court for an Order granting to the United States a  
default judgment in this case, and issuing a Order of Preliminary Forfeiture based on the  
claimant's failure to file an answer, as further set forth below.

1. The United States initiated a judicial proceeding to effect the forfeiture of this res; the  
Verified Complaint of Forfeiture was filed on December 27, 2005.

2. A copy of the Verified Complaint of Forfeiture and Warrant for Arrest was served by

1 hand delivery service, on December 28, 2005, to defendant's attorney, John F. Gorman.

2 3. The United States contacted Marilyn Alcon, Deputy Clerk, for the U.S. District Court  
3 of Guam, for verification of any filings by defendant or its attorney, John F. Gorman. As of  
4 today, defendant nor its attorney has filed any form of response to plaintiff's complaint. A copy  
5 of the court's docket sheet is attached as Exhibit "A".

#### 6 MEMORANDUM OF LAW

7 The Supplemental Rules for Certain Admiralty and Maritime Claims, Rule C(6), provides  
8 that the claimant shall file a claim within 10 days after process has been executed or within such  
9 additional time as may be allowed by the court, and shall serve an answer within 20 days after the  
10 filing of the claim.

11 18 United States Code, § 983(a)(4), however, is in conflict with Rule C(6), in that it  
12 provides as follows:

13 (4)(A) In any case in which the Government files in the appropriate  
14 United States district court a complaint for forfeiture of property, any  
15 person claiming an interest in the seized property may file a claim asserting  
16 such person's interest in the property in the manner set forth in the  
17 Supplemental Rules for Certain Admiralty and Maritime Claims, except  
18 that such claim may be filed not later than 30 days after the date of service  
19 of the Government's complaint, or, as applicable, not later than 30 days  
20 after the date of final publication of notice of the filing of the complaint.

21 (4)(B) A person asserting an interest in seized property, in accordance  
22 with subparagraph (a), shall file an answer to the Government's complaint  
23 for forfeiture not later than 20 days after the date of the filing of the claim.

24 Regardless of which rule obtains, it has been approximately 42 days since defendant's  
25 counsel, Attorney Matthew Smith received the government's Verified Complaint of Forfeiture.  
26 The failure to file a claim in response to the government's complaint means that claimant lacks  
27 statutory standing. United States v. Lido Motel, 135 F.3d 1312 (9<sup>th</sup> Cir. 1998). The failure to file  
28 a timely answer likewise deprives the claimant of statutory standing. United States v.  
Commodity Account No. 54954930 at Saul Stone & Co., 219 F.3d 595 (7<sup>th</sup> Cir. 2000).

Federal Rule of Civil Procedure 55 provides that the court may enter an order of default  
when the party against whom relief is sought has failed to plead or otherwise defend the action as

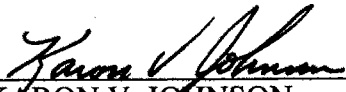
1 provided by law. Defendant's counsel has had ample opportunity to respond to the Verified  
2 Complaint of Forfeiture and has failed to do so.

3 PRAYER FOR A DEFAULT JUDGMENT

4 **WHEREFORE**, the United States of America prays that this Honorable Court issue a  
5 default judgment against defendant, \$3,700.00 in United States Currency and an Order of  
6 Preliminary Forfeiture, forfeiting to the United States of America the defendant \$3,700.00 in  
7 United States Currency and disposing of it in accordance with the law.

8 RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of January, 2006.

9 LEONARDO M. RAPADAS  
10 United States Attorney  
Districts of Guam and the NMI

11 By:   
12 KARON V. JOHNSON  
13 Assistant U.S. Attorney  
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# Docket Activity Report

Civil/Criminal CM/ECF System -- District Court of Guam

Report Filed Period: 1/1/2005 - 2/2/2006

Case Number/Title	Dates	Category/ Event	Docketed by	Notes
1:05-cv-00040 United States of America v. \$3,700.00 United States Currency	Entered: 12/27/2005 16:38:00 Filed: 12/27/2005	Category: cmp  Document: <u>1</u>	sai Type: crt	Cause: 08:1324 Aliens: Complaint for Forfeiture NOS: Forfeit/Penalty: Other Office: Hagatna Presider: Unassigned Jury demand: None
	Verified Complaint of Forfeiture filed by United States of America against \$3,700.00 United States Currency. (Attachments: # <u>1</u> Cover Sheet)(sai, )			
	Entered: 12/28/2005 13:36:42 Filed: 12/28/2005	Category: service  Document: <u>2</u>	rmm Type: crt	
	Certificate of Service filed by United States of America re <u>1</u> Verified Complaint, Warrant of Arrest, and Notice of Arrest (rmm, )			
	Entered: 12/29/2005 10:51:05 Filed: 12/28/2005	Category: order	rmm Type: crt	
	Warrant of Arrest In Rem Issued - U.S. Marshal Service (rmm, )			
	Entered: 12/29/2005 10:52:14 Filed: 12/28/2005	Category: notice  Document: <u>3</u>	rmm Type: crt	
	Notice of Arrest filed by United States of America (rmm, )			

Selection Criteria	
Case Number	05-00040
Office	All

Exhibit "A"

<b>Case Type</b>	All
<b>Case Flags</b>	All
<b>Open Cases</b>	Yes
<b>Closed Cases</b>	No
<b>Category (Doc Type)</b>	All
<b>Sort by</b>	case number

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PACER Service Center			
Transaction Receipt			
02/02/2006 13:42:26			
<b>PACER Login:</b>	us5035	<b>Client Code:</b>	
<b>Description:</b>	Docket Activity Report	<b>Search Criteria:</b>	1:05-cv-00040 Filed between: 1/1/2005 and: 2/2/2006
<b>Billable Pages:</b>	1	<b>Cost:</b>	0.08

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